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Action by Charles Petty against A. K. Kritselis. Judgment for plaintiff, and defendant brings error. Affirmed.

McKinney & Settle, of South Boston, for plaintiff in error.

Jas. H. Guthrie, of South Boston, for defendant in error.

GALLION & GREGORY *v.* WINFREE.

Jan. 20, 1921.

[105 S. E. 539.]

1. Appeal and Error (§ 970 (3)*)—Trial (§ 59 (2)*)—Order of Introduction of Evidence in Trial Court's Discretion.—The order of introduction of evidence is left largely to the discretion of the trial courts, whose ruling thereon will not be disturbed unless plainly prejudicial to the complaining party.

2. Evidence (§ 271 (7)*)—Self-Serving Declarations as to Broker's Contract Held Inadmissible.—In an action for damages for breach of an oral contract for division of land broker's commission, the testimony of plaintiff and others, to the effect that plaintiff had said previous to the sale that he was interested in the deal and had a contract with defendants, was self-serving and inadmissible on direct examination, where plaintiff's testimony was unimpeached.

3. Appeal and Error (§ 1177 (5)*)—Where Judgment Cannot Be Entered by Supreme Court, Matter Will Be Remanded for New Trial.—Where, with objectionable testimony stricken, the case was so left that a final judgment could not be entered by the Supreme Court under Code 1919, § 6365, it must be remanded to circuit court for new trial in conformity with the opinion.

Error to Circuit Court, Lunenburg County.

Action by T. E. Winfree against G. L. Gallion and H. C. Gregory, copartners. Judgment for plaintiff, and defendants bring error. Reversed and remanded for new trial.

Geo. E. Allen, of Victoria, for plaintiff in error.

W. Moncure Gravatt, of Blackstone, for defendants in error.

OWENS *v.* COMMONWEALTH.

Jan. 20, 1921.

[105 S. E. 531.]

1. Criminal Law (§ 201*)—When Proceeding in Another Court Bars Prosecution.—Under Code 1919, § 4775, as amended by Acts 1920, c. 118, a mere proceeding or prosecution which does not result in a conviction does not bar another prosecution in a state court, but, if

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the same act be a violation of both a state and federal court, and accused in the state court can show that before that there has been a prosecution or proceeding against him under a federal statute for the same act, the prosecution in the state court is barred, but a proceeding in federal court after the beginning of a prosecution in the state court will not bar the prosecution in the state court.

2. Criminal Law (§ 100 (3)*)—Court First Taking Jurisdiction of Prosecution Has Right to Conclude.—The court which first takes jurisdiction of a criminal prosecution has priority and the right to conclude the specific litigation.

Error to Circuit Court, Dickenson County.

D. C. Owens was convicted of a violation of the Prohibition Act, and brings error. Affirmed.

A. A. Skeen, of Clintwood, for plaintiff in error.

The Attorney General and Jno. R. Saunders, of Richmond, for the Commonwealth.

STEPHEN PUTNEY SHOE CO., Inc. *v.* ORMSBY'S ADM'R

Jan. 20, 1921.

[105 S. E. 563.]

1. Municipal Corporations (§ 706 (5)*)—Evidence Held to Establish Negligence in Driving Motor Truck.—In an action for death of a pedestrian struck by defendant's motortruck, evidence held to establish the negligence of defendant.

2. Municipal Corporations (§ 705 (10)*)—Decedent Killed by Motortruck Negligence in Stepping from Sidewalk.—Pedestrian killed when struck by defendant's motorman held negligence in leaving sidewalk and going on the street without looking before stepping from the curb.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 386.]

3. Municipal Corporations (§ 705 (10)*)—Last Clear Chance Held Not to Apply to Case of Death from Motortruck.—Doctrine of last clear chance held not to apply to case of pedestrian who left sidewalk without looking and in the street was struck and killed by defendant's motortruck.

Error to Law and Equity Court of City of Richmond.

Action by Ormsby's administrator against the Stephen Putney Shoe Company, Incorporated. To review judgment for plaintiff, defendant brings error. Reversed.

S. A. Anderson and *A. G. Collins*, both of Richmond, for plaintiff in error.

Geo. E. Havv, of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.